

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CH4034
)	HUD NO.: 05-09-1208-8
MARGARET DUNN)	ALS NO.: 09-0734
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box, presiding upon Margaret Dunn's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent") of Charge No. 2009CH4034; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On May 28, 2009, the Petitioner filed an unperfected charge of discrimination with the Respondent, which she perfected on July 31, 2009. The Petitioner alleged her previous landlord, Michael Kotz ("Landlord #1"), and her new landlord, Theodoros Touzios ("Landlord #2"), altered the terms, conditions or privileges of her real estate transaction because of her association with her disabled son in violation of Section 3-102.1(B) of the Illinois Human Rights Act (the "Act"). In Count A, the Petitioner alleged that Landlord #1 failed to make repairs, "bad-mouthed" her and her family to Landlord #2, and charged her higher rent than other tenants because of her association with her disabled son. In Count B, she alleged that Landlord #2 served her with a 30-day notice to terminate her tenancy in March 2009 because of her association with her disabled son. On November 16, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 21, 2009, the Petitioner timely filed this Request.
2. Landlord #1 previously owned a thirteen-unit apartment building ("Subject Premises"). The Petitioner leased one of the apartments in the Subject Premises.

3. The Petitioner had a month-to-month tenancy for \$800 rent at the time of the incidents alleged in the charge.
4. On Landlord #1's rent roll, one tenant was charged a higher rent than the Petitioner (\$825), two tenants were charged the same rent as the Petitioner (\$800), and seven tenants were charged lower rents than the Petitioner (four apartments at \$750, one apartment at \$735, one apartment at \$675, and the basement apartment at \$565).
5. In November 2008, Landlord #1 sold the Subject Premises to Landlord #2.
6. In March 2009, Landlord #2 served the Petitioner with a 30-day termination notice. The Landlord stated the Petitioner had to vacate the apartment because he needed to perform extensive renovations in the Petitioner's apartment. Landlord #2 also terminated or failed to renew the tenancies of three other tenants for the same reason.
7. In her charge, the Petitioner alleged both Landlord #1 and Landlord #2 altered the terms, conditions or privileges of her real estate transaction because of her association with her disabled son. In Count A the Petitioner alleged that Landlord #1 failed to make repairs, "bad-mouthed" her and her family to Landlord #2, and charged her higher rent than other tenants. In Count B, she alleged that Landlord #2 served her with a 30-day termination notice in March 2009 because of her association with her disabled son.
8. After the Petitioner had filed her charge, the Respondent sent a medical release form to the Petitioner to obtain medical information regarding the nature of her son's alleged disability. The Respondent mailed the medical release to the Petitioner on September 15, 2009, and requested that the Petitioner sign and return the medical release to the Respondent by September 28, 2009. The letter also stated that the Petitioner should contact the Respondent to schedule an interview. The Respondent did not receive a response from the Petitioner.
9. In her Request, the Petitioner contends that she mailed the medical release to the Respondent on October 14, 2009, but that the Respondent never attempted to obtain her son's medical records. The Petitioner states she was never informed of any in-person interview and denies failing to appear for such. The Petitioner further states that she and her son heard Landlord #1 "bad-mouth" her to Landlord #2 and further argues her apartment did not need to be vacated for the renovations. The Petitioner also alleges in her Request for the first time that Landlord #1 retaliated against her by raising her rent for successfully litigating an eviction action against him in October 2007.
10. In its response, the Respondent argues the Petitioner did not establish a *prima facie* case of disparate treatment. The Respondent states the Petitioner failed to show her son's alleged condition qualified as a disability under the Act since she never returned the completed medical release form. The Respondent further contends that even if the Petitioner had mailed

the medical release as she states in her Request, she admittedly did so after the response deadline of September 28, 2009, had passed. Finally, the Respondent argues there is no substantial evidence that Landlord #2's articulated reason for terminating the Petitioner's tenancy was a pretext for unlawful discrimination.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

First, as to both Counts A and B, the Petitioner failed to prove that her son was disabled. Clearly, if the Petitioner wished to establish a claim of disability discrimination via her association with her allegedly disabled son, the Petitioner had the burden to establish that her son was in fact disabled, i.e., that he had a qualifying condition as defined by the Act. See 56 Ill.Admin.Code, Ch. II, Section 2500.20(c). The Petitioner failed to meet this initial burden because there is no evidence that she timely submitted a signed medical release to the Respondent.

Second, assuming *arguendo* the Petitioner could have met her burden of proving that her son was disabled, there is no substantial evidence of disability discrimination.

As to Count A, there is no substantial evidence of a nexus between the amount of her rent and her son's alleged disability. There is no evidence that Landlord #1 charged the Petitioner higher rent because of her son's disability since the rent roll revealed that several tenants paid the same or higher rent than the Petitioner. There is no evidence these other tenants were disabled or were associated with disabled persons. Therefore, there is no evidence the Petitioner was treated less favorably than tenants outside of her protected class.

As to Count B, the Commission found no substantial evidence Landlord # 2 terminated the Petitioner's lease because of her association with her allegedly disabled son. Landlord #2 presented undisputed evidence that he had similarly terminated or failed to renew the tenancies of three other tenants because of the need to perform extensive renovations in their apartments. There was no evidence these other tenants were disabled or associated with disabled persons. Therefore, as to Count B, there is no substantial evidence the Petitioner was subjected to discriminatory treatment.

Finally, the Commission cannot consider the Petitioner's newly raised allegations of retaliation. The Commission does not have jurisdiction to review new allegations or charges of discrimination raised for the first time in a request for review. See 775 ILCS § 8-103 (West 2010).

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Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, Michael Kotz and Theodoros Touzios as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
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Entered this 14th day of July 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box